IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Crl.MC.No. 2436 of 2007()

AGAINST THE ORDER DATED 23/05/2007 IN CMP.1152/2007 IN CC.372/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NILAMBUR

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PETITIONER: PETITIONER/ACCUSED:

P.P. RAJEEV, S/O. PAULOSE,
PUTHAYATH HOUSE, PATHIRIPPALA, KRISHNAGIRI,
SULTHAN BATHERY, WYNAD DISTRICT.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE:

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1. KOLAKANDATHIL SMITHA, W/O.VISWAMITHRAN,
DEEPAM, NEAR K.S.F.E. OFFICE, KOVILAKATHUMURI,
NILAMBUR (PO), NILAMBUR TALUK.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2436 of 2007

Dated this the 2nd day of August, 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. Proceedings were initiated as early as in 2001. Once the petitioner was found guilty, convicted and sentenced, in the appeal, the learned Sessions Judge had sent the matter back to the learned Magistrate for giving opportunity to the petitioner to adduce defence evidence.

2. When the matter came up before the learned Magistrate again, the petitioner filed the defence witness list of 3 witnesses. They are the mother, the brother and the sister respectively of the defacto complainant. The petitioner wanted those witnesses to be examined. What is the purpose ? Entering into an agreement and issue of cheque on the basis of the said agreement is not disputed. The short contention raised is that there has been discharge of the liability. Payments made subsequent to the lodging of the proceedings are evidenced by receipts and those receipts have been produced. There is no dispute regarding receipt of amounts under those receipts by the complainant. According to the petitioner, he wants to examine these 3 witnesses, close relatives of the complainant to raise and support

contention that payments prior to the date of the agreement and the date of the cheque are liable to be given due credit.

3. The learned Magistrate appears to have obligingly issued summons to those witnesses obviously because of the direction in the judgment of the appellate court. The presence of those witnesses could not be ensured. At that stage, the petitioner filed an application calling upon the complainant to furnish the address of those witnesses. The learned Magistrate had dismissed the said petition holding that there is no provisions in the Code of Criminal Procedure.

4. It is contended that the approach of the learned Magistrate is incorrect. Powers under Section 165 of the Evidence Act is sufficient in its scope to issue such a direction in the interests of justice.

5. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to invoke and exercise. The extraordinary inherent jurisdiction is sought to be invoked. Every error in facts or in law committed by subordinate courts will not ip so facto persuade this Court to invoke the inherent jurisdiction under Section 482 Cr.P.C. Is there failure of justice, is the crucial question to be considered. So reckoned, I do not find any failure of justice resulting from the impugned order. Even the attempt

to insist on the examination of the witnesses does appear to me to be only a ploy to drag on the proceedings. It is crucial to note that subsequent to the date of the agreement and date of the cheque, there is no disputed payments at all. The attempt is to advance a contention that the anterior payments made must also be creditted towards the subsequent agreement and cheque issued. I shall not encumber records with any unnecessary finding on merits. Suffice it to say that I am satisfied that this is not a fit case where the jurisdiction under Section 482 Cr.P.C can or ought to be invoked even assuming the order of the learned Magistrate could have been different in view of the sweeping mandate under Section 165 of the Evidence Act.

6. This Crl.M.C is, in these circumstances, dismissed. There shall be a direction to the learned Magistrate to dispose of the case as expeditiously as possible now.

(R.BASANT, JUDGE)

rtr/-